

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-209626

Issued to: WILLIAM LEWIS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

617

WILLIAM LEWIS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 21 August, 1952, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked Merchant Mariner's Document No. Z-209626 issued to William Lewis upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS SANTA CERRO under authority of the document above described, on or about 15 August, 1952, while said vessel was in the port of Mobile, Alabama, he wrongfully had in his possession two cigarettes which contained marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Post Patrol Officer who had found the marijuana cigarettes on Appellant's person. He also introduced certified copies of the U.S. Customs Laboratory report which states that the substance was marijuana.

In defense, Appellant offered in evidence the testimony of two character witnesses as well as testifying under oath in his own behalf. Appellant stated that he had found an open package of Chesterfield cigarettes on a table in the crew's recreation room and that he had smoked six or seven of the cigarettes without noticing the two marijuana cigarettes. Appellant testified that he had never smoked marijuana.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-209626 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

1. It was not shown by the evidence at the hearing that the subject was conscious of having two marijuana cigarettes in his possession, or that he had knowledge that the said cigarettes contained marijuana or like drugs.
2. It was not shown by the evidence whether or not subject was on duty at the time it was discovered that he had said cigarettes on his person.
- 3 The evidence fails to show that subject took or smoked the said marijuana cigarettes, and therefore the only so called "misconduct" was the violation of a criminal law, if, in fact, there was a violation.
4. Testimony was admitted which were mere conclusions and matters which were subject to being determined, in other words, testimony was admitted which invaded the province of the hearing examiner. This testimony is that which was given by Mr. Reid when he was asked if he had been taking cigarettes out of the particular package in question, would he have noticed the marijuana cigarettes in same and he answered "definitely."
5. There was no definite proof that the cigarettes analyzed were the same cigarettes which were taken from William Lewis.
6. A prima facie case was not made out by evidence.
7. The penalty invoked was severe and excessive for the alleged misconduct.

APPEARANCES: William Grayson, Esquire, and M. F. Dozier, Esquire,  
of Mobile, Alabama, of Counsel

Based upon my examination of the record submitted, I hereby make the following

#### FINDING OF FACT

On 15 August, 1952, Appellant was serving as messman on board the American SS SANTA CERRO and acting under authority of his Merchant Mariner's Document No. Z-209626 while the ship was in the port of Mobile, Alabama.

During a routine search of the ship, a Port Patrol Officer stopped Appellant in a passageway, searched him, and found two marijuana cigarettes which were in a Chesterfield cigarette package with three Chesterfield cigarettes. The marijuana cigarettes could be easily distinguished from the

ordinary cigarettes because the ends of the former were twisted. Analysis by the U. S. Customs Laboratory at New Orleans, Louisiana, verified that the substance in the two cigarettes was marijuana. The amount was 15 grains of partially ground leaves and stems.

There is no record of any prior disciplinary action having been taken against Appellant during eight years at sea. He is 29 years of age.

#### OPINION

The points raised on appeal have no persuasive merit. The testimony of the Port Patrol Officer and the analysis report raised a prima facie presumption that Appellant knowingly had marijuana in his possession. This presumption is in direct conflict with Appellant's testimony but the Examiner is the best judge as to the credibility of the witnesses who appear before him; and the Examiner specifically stated in his opinion that he did not believe Appellant's testimony as to lack of knowledge.

There was no necessity to prove that Appellant was on duty at the time of apprehension or that he had smoked a marijuana cigarette. Possession alone is sufficient to follow the well-established policy of revocation in all cases where seamen are found to have associated with narcotics in any manner in connection with their employment on American Merchant Marine vessels. Appellant's prior good conduct is not a sufficient ground to mitigate the order imposed for this most serious offense.

#### ORDER

The order of the Examiner dated at Mobile, Alabama, on 21 August, 1952, is AFFIRMED.

A. C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 28th day of November, 1952.